IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.737 OF 2005
WITH
CIVIL APPLICATION NO.658 OF 2005

M/s. Prataprai N. Kothari Builders & Developers. ..Appellant.
Vs.
Badelal Gupta & Ors. ..
Respondents.

...

Mr. M.M. Chopra for the Appellant.
Mr. M.C. Shah with Mr. J.B. Singh for Respondent No.1.
Ms. Geeta Joglekar for Respondent No.2.

...

CORAM : DR.D.Y.CHANDRACHUD, J.

16th November, 2005.

P.C. :

Against the order of the City Civil Court dated 14th July, 2004, an appeal was filed by the Municipal Corporation. On 17th October, 2005, a Learned Single Judge of this Court (Mr. Justice B.H. Marlapalle) rejected the civil application filed by the Corporation for condonation of delay on the ground that the delay had not been satisfactorily explained. The order of this Court, however, holds thus :

> "In addition, the location of the suit tree has been demonstrated by the learned counsel for the respondent no. 1 by placing before the court few photographs and it is clear

> that the distance between the trunk of the tree and the construction that has been put up recently by respondent no.2 is more than 10 ft. This distance shows that the tree was not required to be shifted from its existing place, at least on account of the construction undertaken by the respondent no.2. Thus, the notice issued by the Corporation for shifting the tree was uncalled for."

Counsel appearing for the Appellant was served with the proceedings before this Court in the earlier appeal filed by the Municipal Corporation, but the Appellant had not appeared before the Court on 17th October, 2005. In view of the order dated 17th October, 2005, counsel appearing for the Appellant prays leave to withdraw this Appeal from Order with liberty reserved to file an application for review of the order dated 17th October, 2005, in so far as it affects the Appellant. On the request thus made, the Appeal is permitted to be withdrawn with liberty as prayed.

Civil Application 658 of 2005 does not survive in view of the order passed in the Appeal from Order and is accordingly disposed of.